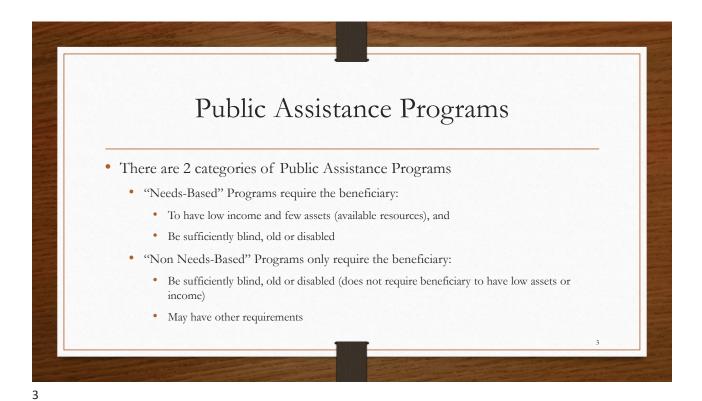


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The Introduction of ABLE Act • When ABLE Accounts were first proposed, some thought it would be the end for special needs trusts • ABLE Accounts can actually supplement and enhance special needs trusts • This presentation will review the basics of both ABLE Accounts and special needs trusts and the advantages and disadvantages of both vehicles to protect individuals who require "needs-based" public assistance



Common "Needs-Based" Programs

- Supplemental Security Income (SSI)

- Has Income + Resource requirements to be eligible in addition to being disabled

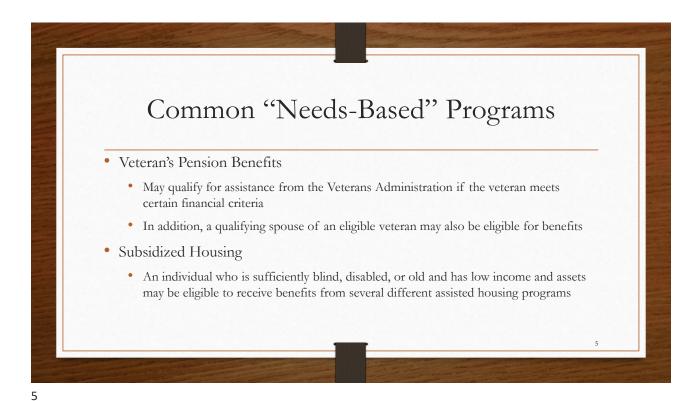
- Provides income benefits to persons with qualified disabilities and the elderly

- Medicaid (Mo HealthNet)

- Federal welfare program that each state has its own statutes and regulations

- Many states base their Medicaid eligibility on SSI qualification

- Missouri is a 209(b) state



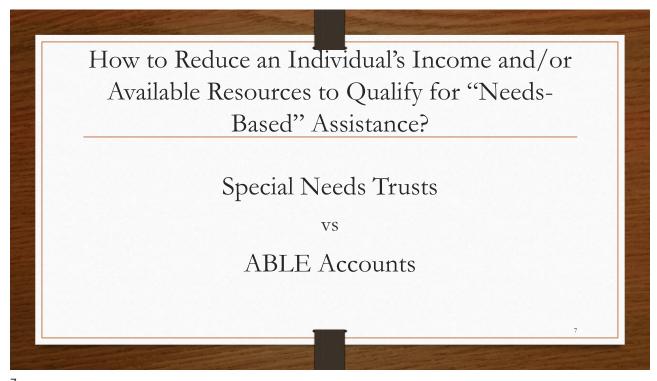
Only "Needs-Based" Benefits Require
Protection of Assets

Planning to reduce a person's "available resources" is only needed if the
person is receiving "need-based" public assistance or if the person may
become eligible for assistance in the future

Two main reasons a person who has special needs is not eligible for "needsbased" assistance is:

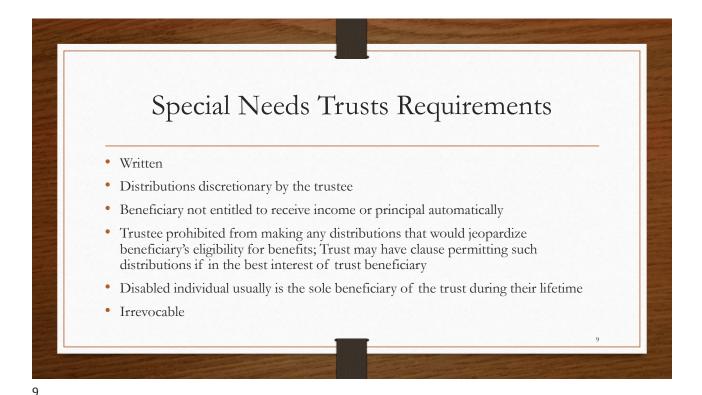
The individual has too much income, or

The individual has too many resources



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Why use a Special Needs Trust? • To reduce resources for persons with disabilities as not available so as to retain needs-based benefits • To improve the quality of life



Different Types of Special Needs Trusts

• Third Party Special Needs Trusts

• Self-Settled Special Needs Trusts

• d4A Self-Settled Special Needs Trust

• d4B Miller Special Needs Trust

• In Missouri used for home and community based waiver MO Health Net services

• d4C Pooled Special Needs Trust

Special Needs Trusts

Trust Type	(d)(4)(A), Self-Settled	(d)(4)(C), Pooled	Third-party SNT	
Individual, Parent, Established by Grandparent, Guardian or Court		Individual, Parent, Grandparent, Guardian or Court	Other than Trust Beneficiary	
Assets Funding	Assets Funding Disabled person [Third person (Can be a parent)	
Beneficiary	Disabled person only	Disabled person	Anyone	
Grantor Trustee	Grantor Trustee No		Yes	
Distributions	To third parties	To third parties	To third parties	
Payback	Payback Yes		No	
Disability	SSA Definition	SSA Definition	SSA Definition	
GiftTax Exclusion	GiftTax Exclusion Cannot use		Can use	
Testamentary	Testamentary No		Yes	
Age Limit Funded by 65		No (check state) In Missouri, 65	None	
Frequent used for	PI or Inheritance	Same but lesser	Any use	





Self-Settled SNT

42 U.S.C. §1396p(d)(4)(A)

Self-Settled Special Needs Trust

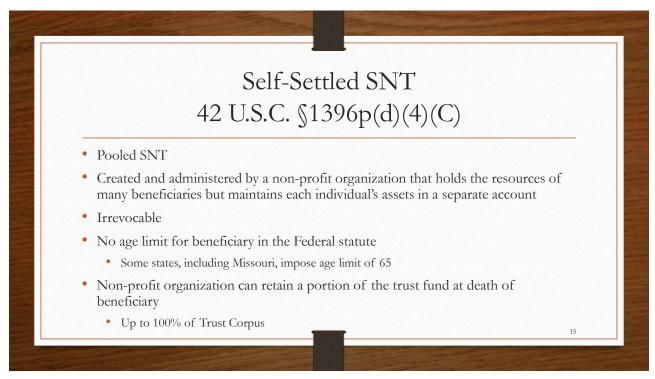
Created for the sole benefit of an individual with disabilities; under age 65, established by the individual, a parent, grandparent, guardian or court

Created during lifetime

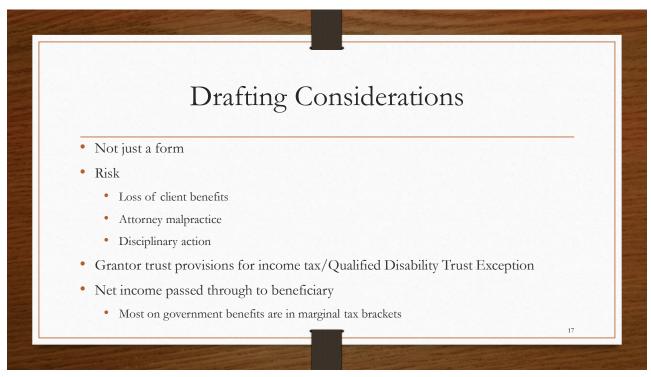
Irrevocable

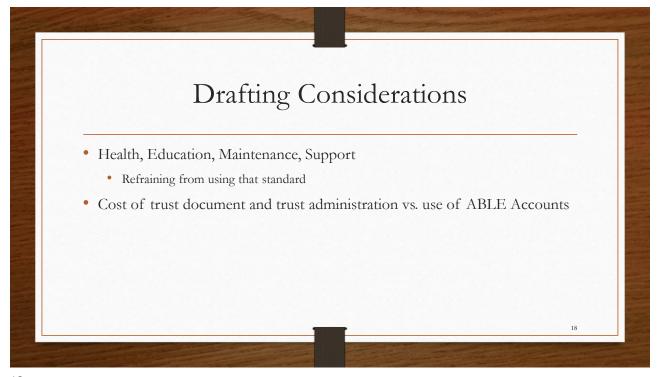
Medicaid reimbursement at death of the trust beneficiary to all states that have provided medical assistance

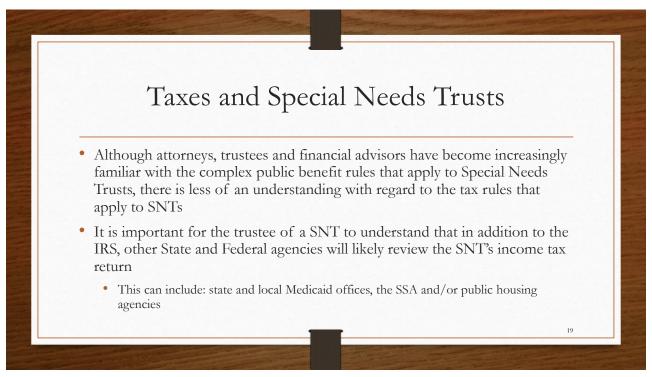
Must be funded before the beneficiary reaches age of 65 with trust beneficiary's own funds



Third Party Special Needs Trust Trust must be funded with assets that do not belong and are not controlled by the beneficiary No payback provision is required Trust can be drafted to benefit more than one beneficiary Trust can be created by will or during life



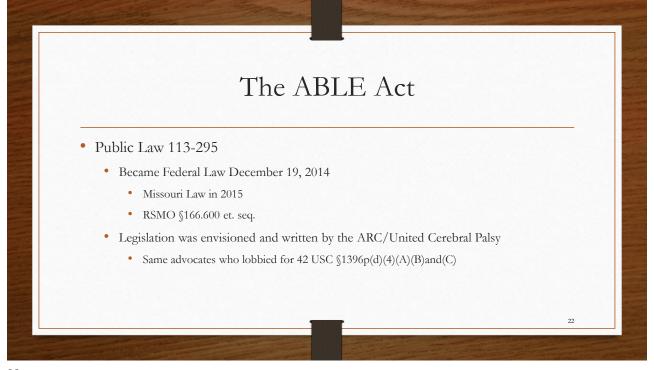


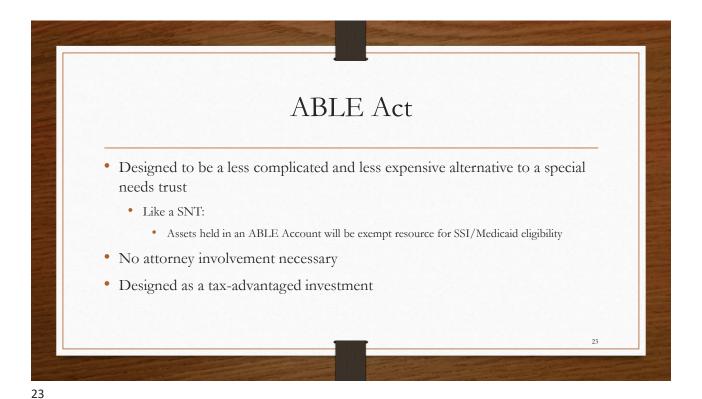


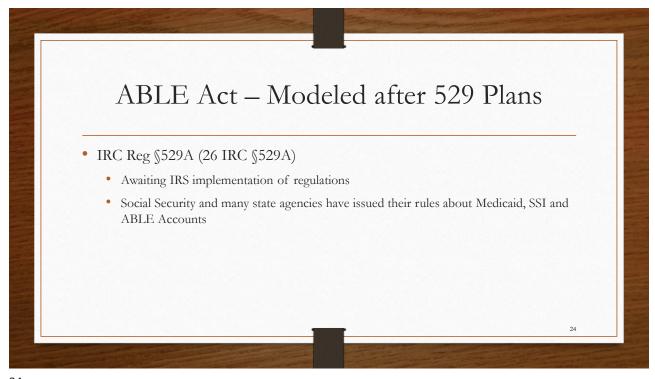
Advantages of Special Needs Trusts - Allows assets to be held for the benefit of a person with special needs so that the beneficiary's life is enhanced by the special needs trust and the assets in the trust are not deemed "available" and "countable" resources - Allows large sums of money and other assets to be held for the benefit of the beneficiary without disqualifying the beneficiary from "needs-based" benefits - Assets are managed by a trustee, rather than the beneficiary



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ABLE Account Facts
Money in the ABLE account is not an available resource for needs-based public benefit programs
But the person has to qualify for the ABLE account, and there are restrictions on how money in an ABLE account can be used without adverse consequences
ABLE accounts are not property of a conservatorship estate
Mo. Rev. Stat. §209.625 (August 28, 2019)



Who Qualifies for an ABLE Account?

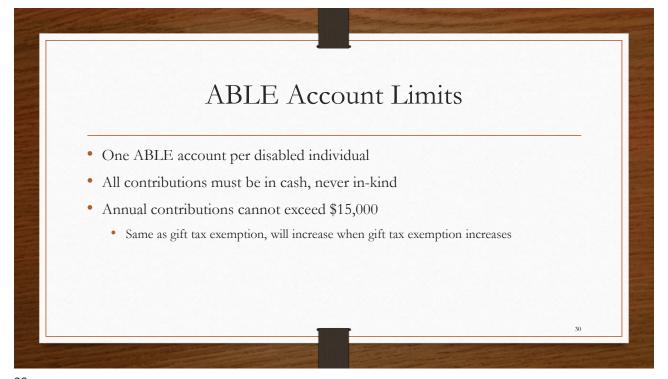
• Disabled or blind before age of 26, and

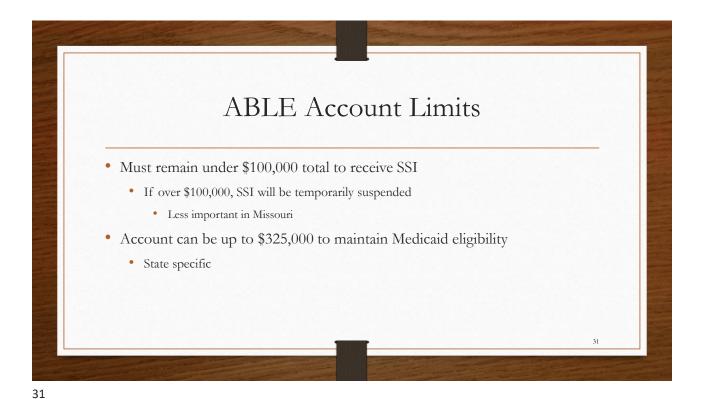
• Receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI),

or

• Have a satisfactory "disability certification"







ABLE Account Requirements

• Must be disabled before age 26

• Originally no age limit

• 2016 Congressional Bill to raise age limit to 46

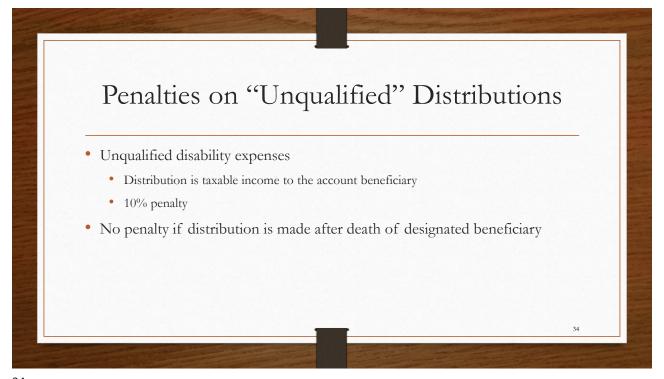
• Bill not enacted

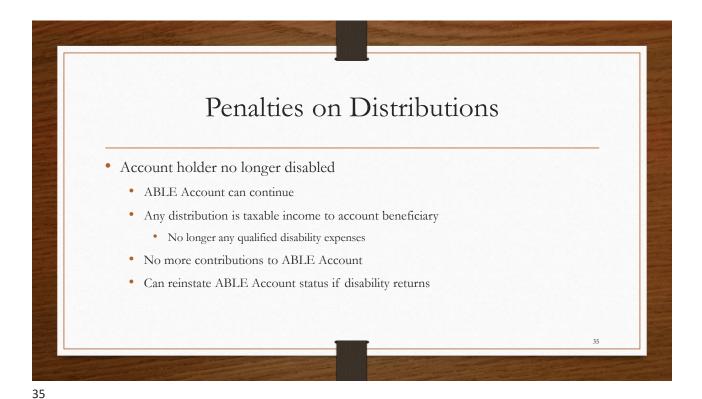
• Disability community continues to advocate for increases in age

• Limit of one account per beneficiary

• Problem of dueling divorced parents







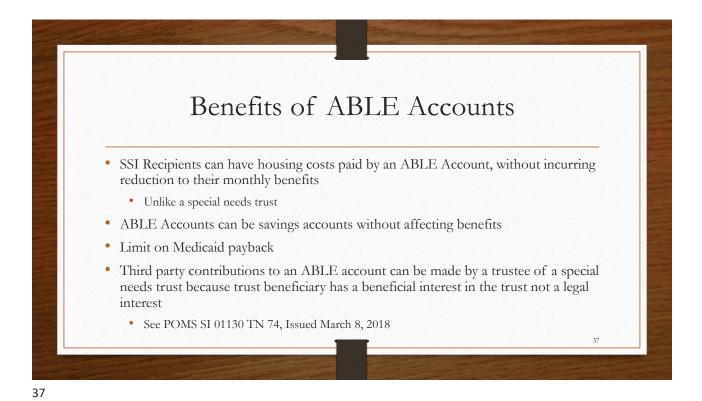
Medicaid Payback

• At death of account owner

• Medicaid, only, paid back (Mo HealthNet)

• Payback limited to time period in which ABLE Account existed

• Helpful in 1st Party SNT situations



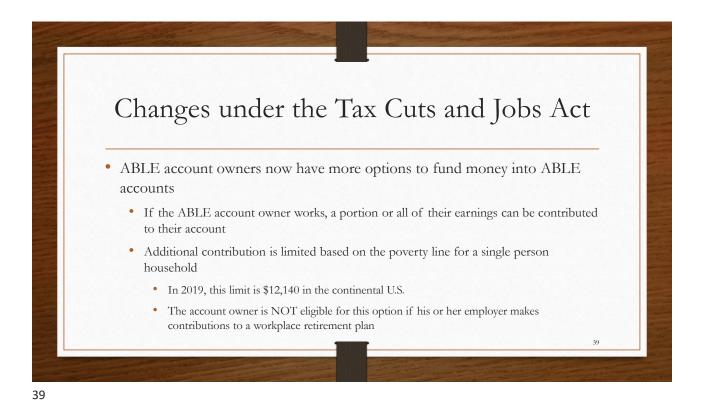
Benefits of ABLE Accounts

• Quick, easy depository for moneys over the \$2,000 Medicaid resource limit

• No "sole-benefit" rules for SSI recipients

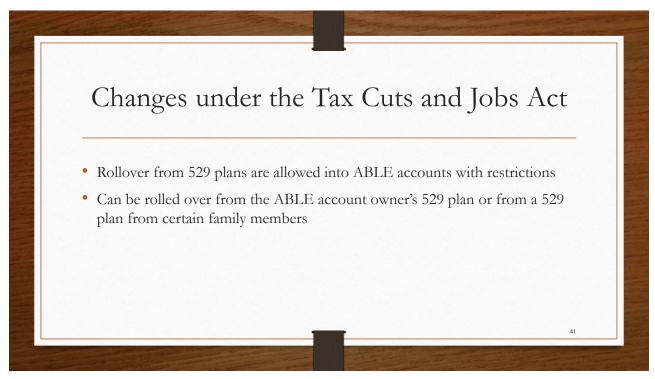
• At death of account beneficiary, can pay funeral expenses prior to satisfaction of Medicaid payback claim

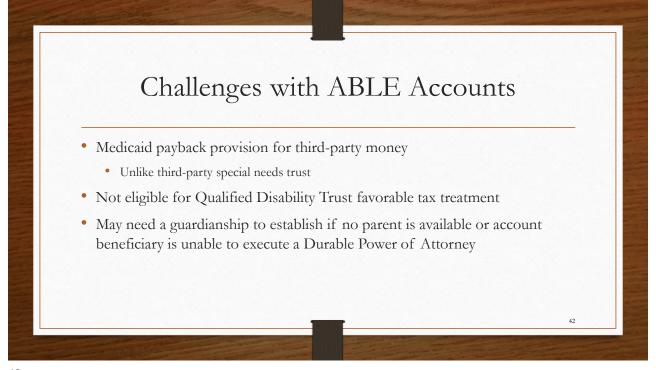
• Unlike Special Needs Trusts

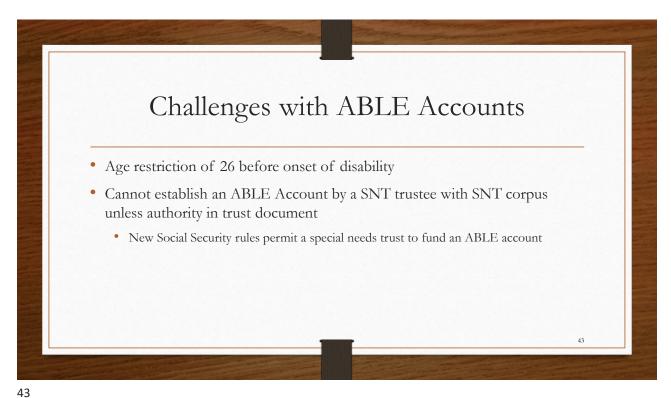


Changes under the Tax Cuts and Jobs Act

Saver's Credit now available to ABLE account owner after 2018Allows ABLE account owner to qualify for a Saver's Credit
Based upon contributions made by the ABLE account owner to his/her ABLE account
Credit is given on up to \$2,000 of contributions made in a given year
Saver's Credit is a special credit given to low and moderate income workers
Credit will be claimed on Form 8880 – Credit for Qualified Retirement Savings
Contributions and will reduce the participant's taxes or increase their tax refund







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ABLE Accounts vs Special Needs Trust				
	ABLE Accounts	Third Party SNT	Self-Settled d4A	Special Needs Trusts d4c (Pooled)
Whose assets in account or trust	Third Party's or Beneficiary's	Not the Beneficiary's	Beneficiary's	Beneficiary's
Limitations	Disability must begin before age 26; only \$15,000 per year can be distributed	None, other than beneficiary's assets cannot be added	Beneficiary must be under age 65	May have transfer penalty if beneficiary puts assets in after 65
Who Establishes	Beneficiary; or Beneficiary's guardian, parent or DPOA agent	Not the beneficiary	Beneficiary, parent, grandparent, guardian or court	Beneficiary, parent, grandparent, guardian or court
Who Controls the account or trust	Beneficiary or someone acting on beneficiary's behalf	Any person (other than the beneficiary) or corporation	Any person (other than the beneficiary) or corporation	Only non-profit organization that established the master trust

	ABLE Accounts	Third Party SNT	Self-Settled d4A	Special Needs Trusts d4c (Pooled)
Who can benefit	Only the Beneficiary	Beneficiary and others chosen by Settlor	Only the Beneficiary	Only the Beneficiary
Is there a separate written agreement	No custom drafted; must enroll with ABLE program offered by the state	Yes, custom drafted trust agreement	Yes, custom drafted trust agreement	Not custom drafted; join a master trust created by a non-profit organization as trustee
When to use	When someone wants to gift to beneficiary or beneficiary has too many assets	When someone wants to give (or leave at death) assets to benefit someone else	When beneficiary receives settlement, gift or inheritance or has accumulated assets prior to disability or when turning 18	When beneficiary receives settlement, gift or inheritance or has accumulated assets prior to disability or when turning 18
Repay Medicaid upon death?	Yes, but only Medicaid received after ABLE account starts	No	Yes, all Medicaid beneficiary received during life	Depends on what pooled trust negotiated with state, but usually all remaining assets paid to either Medicaid or retained by trustee

ABLE Accounts vs Special Needs Trust				
	ABLE Accounts	Third Party SNT	Self-Settled d4A	Special Needs Trusts d4c (Pooled)
No. of Accts	1 per Beneficiary	Unlimited	Unlimited	Unlimited
Fees	Financial Institution Fees	Attorney and Trustee Fees	Attorney and Trustee Fees	Attorney and Trustee Fees
Investment Options	Investment strategies may be changed twice annually	No restrictions	No restrictions	No restrictions
Valid Distributions	Broadly defined "disability expenses" including basic living expenses	Any expense for sole benefit of beneficiary with certain implications for distributions for food and/or shelter	Any expense for sole benefit of beneficiary with certain implications for distributions for food and/or shelter	Any expense for sole benefit of beneficiary with certain implications for distributions for food and/or shelter

